

CITY OF WEST LAFAYETTE
COMMON COUNCIL
PRE-COUNCIL MINUTES
FEBRUARY 26, 2015

The Common Council of the City of West Lafayette, Indiana, met in the Multi-Purpose Room at the Morton Community Center on February 26, 2015, at the hour of 4:30 p.m.

Councilor Bunder called the meeting to order and presided in the absence of Mayor Dennis.

Present: Bunder, Burch, DeBoer, Dietrich, Hunt, Keen, and Thomas.

Absent: Mayor Dennis

Also present were City Attorney Burns, Clerk-Treasurer Rhodes, Public Works Director Buck, Facilities Director Clark, Parks Superintendent Fawley, Human Resources Director Foster, Fire Chief Heath, WWTU Director Henderson, Deputy Police Chief Leroux, Street Commissioner Payne, and Director of Development Poole.

REPORT OF APC REPRESENTATIVE

Councilor Keen reported that the hearing for the Family Express sign variance was continued to next month.

PUBLIC RELATIONS:

Councilor Bunder stated that if the Council is willing to revise the agenda we need to add an appointment to the Economic Development Commission.

Councilor Keen moved to amend the agenda. Councilor Burch seconded the motion, and the motion passed by voice vote.

UNFINISHED BUSINESS:

Ordinance No. 07-15 An Ordinance Requesting An Additional Appropriation For The Motor Vehicle Highway Fund (Prepared by the Clerk-Treasurer) PUBLIC HEARING

Councilor Bunder read Ordinance No. 07-15 by title only.

Councilor Burch asked if this is for a specific road.

Public Works Director Buck responded that it is 2015 funding for Cumberland Avenue Phase 3.

There was no further discussion.

NEW BUSINESS:

Ordinance No. 08-15 An Ordinance Vacating Platted Easement In The City Of West Lafayette, Indiana (Submitted by Reiling Teder & Schrier, LLC)

Councilor Bunder read Ordinance No. 08-15 by title only.

Ryan Munden (Reiling Teder & Schrier), representing the petitioner, stated that the easement that is being vacated is going to be replaced with a right-of-way. For practical purposes, there will not be a 30-foot easement that would disappear and not be replaced with anything. He explained that the net

result is that the 30-foot easement will be replaced with a 25-foot right-of-way. He stated that it is his understanding from talking with TBIRD Design Services Corporation that the 5 of net vacation is more like two to two and one-half feet. Mr. Munden stated that the existing easement came about by a convenience from 1927 that provided for a future street which has never been dedicated. He stated that there is a subdivision filed for the Family Express property, and as a condition to approval to the minor sketch, it required that the existing easement be vacated and replaced with a dedicated right-of-way so that Elm Drive conforms the zoning ordinance and the thoroughfare plan. He stated that the purpose of this vacation is to clean up Elm Drive so that it is a dedicated street as opposed to the current antiquated easement.

Councilor Keen stated that the ordinance says that the contiguous property would be vacated and become the property of the abutting landowner, Northwestern, LLC. He asked if he is reading that correctly.

Mr. Munden stated that it is referring to the five, or less, feet that would be the net easement that is vacated and not replaced with anything.

Councilor Keen stated that the ordinance also says that Family Express Corporation is requesting the title to the vacated easement be transferred to Northwestern, LLC.

Mr. Munden stated that it also refers to the same five or fewer feet.

Councilor Hunt asked if the contiguous landowners have been duly notified of the Council meeting on Monday.

Mr. Munden responded that we have a waiver and the public hearing will be held in April; it will not be Monday.

Clerk-Treasurer Rhodes explained that the petitioner has filed a waiver for the public hearing to be held greater than 30 days from the first reading because our Council meeting is on April 6. She stated that certified noticed will be sent out to all adjoining owners immediately following the first reading. The notices will be sent out by the Clerk-Treasurer's Office.

Councilor Hunt stated that this is an ordinance that is not coming from Area Plan Commission (APC), so we will have two readings.

Councilor Keen asked what the impact will be if this does not pass.

Mr. Munden responded that if it does not pass, the subdivision will have to be amended in some fashion. It would not prohibit the current subdivision as is; it could be altered but they would probably have to go back to APC given that they would not be able to comply with the condition of the vacation and that Elm Drive be dedicated. We would have to go back and re-visit the subdivision. He stated that it would not affect the project in terms of the actual gas station going in there. It is purely described as housekeeping.

Councilor Hunt stated that she hates to be too aggressive, and she asked why she should vote for this.

Mr. Munden stated that there is no reason not to as it is purely a matter of housekeeping. Elm Drive is going to stay put. He stated that he agrees with a comment made by Public Works Director Buck saying that it legitimizes Elm Drive. He stated that currently we are operating under a 1920s easement and there have been numerous discussions with City Attorney Burns before now, trying to

figure out the status of Elm Drive and how to clean it up, and this is what we were able to come up with. He stated that it does not affect anything from a practical standpoint. Elm Drive will continue to exist where it is; it is just a matter of changing from the current easement to a dedicated right-of-way.

Councilor Hunt asked what Elm Drive is now if not legitimate.

Director Buck stated that during the subdivision discussion, it was discovered that this was not right-of-way and whoever owned the parcel owns out to a little south of the middle of Elm Drive. He explained that they own the actual ground that the street is in and we have just an easement for rights to have the street there. He stated that we will have them plat this as right-of-way so that we actually own the street rather than the property owner owning it and we have an easement for it. He stated that when we do capital projects, if we need to have right-of-way we have to go back and reacquire it, so this clears it up for the City for the future. He stated that it is something we asked for.

Councilor Dietrich asked how we can vacate the property if the City does not own it.

Director Buck responded that we are vacating the easement that the City does own so that it can be replaced with right-of-way.

Councilor Dietrich asked if there is an entity that owns the property now.

Director Buck responded whoever owns the land.

Councilor Dietrich asked if by buying the old Smitty's lot they own to the middle of the street. He asked if it is not left over from the subdivision, and Director Buck answered affirmatively.

City Attorney Burns asked Director Buck to talk about the difference between an easement and a right-of-way, as that may be part of the confusion.

Director Buck stated that he is not a surveyor, but there were detailed discussions at the subdivision with the surveyor who would like to do the research on the 1920s easement. Director Buck stated that there are some very small nuances in differences between right-of-way and easement. He stated that easement is land-rights to do what they are specified for in the easement itself; whether that is to have a road, utilities, or other things. Right-of-way gives us all the rights of having a street there, rather than just an easement. He stated that if we were doing a road project there, we would have the authority to tell something to move and decide what is going to be there, whereas with the easement we have less authority to make those decisions as a city.

Councilor DeBoer, referring to Item 10 on the Petition to Vacate, stated that he feels that the property owner already owns the land, so he does not understand why it would now become part of the Petitioner Real Estate.

Director Buck stated that they own out to the middle of the road. This will vacate the easement, which goes north 30 feet. He stated that they will plat a 25-foot right-of-way from the actual center line of the street, which almost gets to that 30-foot line, but is approximately 2 feet short of it. He stated that the distance does not matter because everything that we need to be in the right-of-way is there, including the sidewalk and curb. He stated that it is far enough north that we would prefer to call it 25 feet off of the real center line than 28.5.

Mr. Munden stated that the property owner is keeping the property that they currently own; it is just extinguishing the existing easement.

Councilor Dietrich, referring to the dimensions, asked if this is a matter of the City giving up land, or we do not own it now.

Director Buck responded that we do not own it now.

There was no further discussion.

Ordinance No. 09-15 An Ordinance Requesting An Additional Appropriation For The Parks And Recreation Fund (Prepared by the Clerk-Treasurer)

Councilor Bunder read Ordinance No. 09-15 by title only.

Parks Superintendent Fawley stated that when the City became a resident at the Morton Community Center it took approximately one-quarter of the regular revenue out of the Parks Non-Reverting Operating Fund. She stated that this is approximately \$50,000 to \$70,000 last year and again this year. She explained that to adjust for that, as well as looking toward the future to realign accounts and funds correctly, we would like to appropriate this \$85,000. She explained that this will allow half of the Morton Center staff to be paid out of the regular Parks and Recreation Fund. Superintendent Fawley stated that the other thing done to help with that revenue item is to raise rental fees at Morton Center, which had not been raised for ten years. She stated that this is the solution for this year, and as we work toward the 2016 budget we will look at other options.

Clerk-Treasurer Rhodes added that the funding for this additional appropriation is supported by a transfer from the Economic Development Income Tax (EDIT) Fund, pursuant to the Mayor's authority under Indiana statute to make that transfer. The authority to appropriate it is the Council's.

There was no further discussion.

Resolution No. 03-15 A Resolution Approving Use Of Indiana Code § 5-23 Including Build, Operate, And Transfer Provisions Exclusively For The State Street Project (Sponsored by Mayor John R. Dennis)

Councilor Bunder read Resolution No. 03-15 by title only.

City Attorney Burns stated that this is an opportunity to allow Purdue and the City to take a look at whether or not the State Street Master Plan can be done in short order and for hopefully less cost than otherwise possible. He stated that by passing this resolution it would approve only for the State Street project, as Councilor Dietrich had questioned at the last meeting why it would be done for more than the State Street project. City Attorney Burns stated that this is a one-off; it is a big deal and he does not anticipate ever seeing anything similar to it, so there is no reason for the City to pass the BOT (Builder, Operate, and Transfer) statute for anything other than the State Street project. He stated that this is a door-opener to take a look through to see if it is going to be possible. He stated that we are optimistic that it will go, and this is our way to look at it and see if it can indeed become an actual finished project in a span of several years, rather than perhaps a decade or more. He confirmed for Councilor Hunt that this is a companion to the next resolution. He stated that with the Memorandum of Understanding (MOU) there is some confusion as there was an MOU passed in 2013 between Purdue and the City pertaining to joint efforts in the annexation. We now have another MOU, next on the agenda, and he stated that he will start calling it the State Street MOU to avoid confusion. He stated that it is a related item, but it is an MOU that is specific to this project.

There was no further discussion.

Resolution No. 04-15 A Resolution Approving A Memorandum Of Understanding In Cooperation With Purdue University Concerning The State Street Project (Sponsored by Mayor John R. Dennis)

Councilor Bunder read Resolution No. 04-15 by title only.

City Attorney Burns stated that the State Street MOU is something that allows both parties to know that both the Purdue Trustees and the Council are supportive of taking a look at this project to see if it can be done. It goes hand in hand with the BOT authorization. The State Street MOU shows what the 30,000-foot plan is between Purdue University and the City in regard to how this project will work, how it will be funded, and how it would be managed and controlled. He stated that as a guiding document it is helpful, but it is not a binding document. By its own terms, either side is out just by asking to be out. He stated that an important and significant point is that the State Street MOU provides the outline for what will be coming in the next month or two, which is the a project development agreement. He described the agreement as the State Street MOU “all grown up,” and explained that it will have a lot of details about who is going to do what, how it is going to be done, and how it is going to be funded between Purdue University, Purdue Research Foundation (PRF), West Lafayette, and the Redevelopment Commission (RDC). He stated that this State Street MOU was put together intentionally to be at 30,000 feet because neither side wanted to be committed to anything until it was obvious that this project had real legs and was going to be able to get up and move.

Clerk-Treasurer Rhodes asked to what extent is the City obligated to cover costs to begin this project.

City Attorney Burns responded that the MOU specifies that the City will share equally on the up-front costs for all of the planning that needs to go into determining whether or not this project will work. He stated that the State Street Master Plan that was put together as a public document, with citizen input, is the starting point. From that there will be engineers, specific legal counsel, as well as financial people who will be putting in lot of time. The City will be paying for 50% of that, so that it is a commitment.

Clerk-Treasurer Rhodes asked if that is 50% of a budget, in other words 50% of a not-to-exceed, rather than 50% of whatever happens. She asked what the estimated cost is. She stated that normally when we enter into agreements, we have a scope; it is not open-ended.

City Attorney Burns responded that it is currently being developed, and it is not an insignificant number by any means. He stated that several hundred thousand dollars would be anticipated.

Director of Development Poole confirmed that amount. He stated that to understand this, this is a big project. This is going to be a lot of work with a legal team, understanding how to put this together because it has not been done before, and with the financial advisors to understand how this is really going to work. He stated that typically this BOT has been done on the bridge project, where it was hundreds of millions of dollars. He stated that the we have been working with Larry Oates and Tom Brooks from the RDC, and Jim Treat (O.W. Krohn & Associates) as well to understanding the funding mechanism—where the money will come from and how much we can allocate without having any issues with our current TIF districts. He stated that it is being worked on now.

Clerk-Treasurer Rhodes stated that she wants to clarify that the funding for this project is going to come out of RDC resources for this first phase.

Director Poole stated that he believes that it is the intention.

Clerk-Treasurer Rhodes asked when it would be coming before the Commission for approval.

Director Poole stated that they will come in March to talk more about where we are and how we want to work on it, but we need to get our agreement and our scope defined first.

Councilor Dietrich asked if the numbers are our share, or if it the amount to be halved.

Director Poole responded that it might be our half; it all depends on how big this project becomes and how much we can truly afford, and where we are going with it. He stated that it is going to be big, but we are working with the consultants to understand how much it is truly going to be, where it can be narrowed down, and what efficiencies we can establish.

Director Buck stated that we are not entering into an agreement. We are asking to be able to put together an agreement to put before you that will have a lot more detail. He stated that all we are doing is talking in generalities, and we want to be able to use the BOT statute and this MOU to be able to engage with each other to, yes, spend some money on up-front costs, that if we decide 'no' will be much less than if we decide to enter into an agreement and go forward with the whole thing. He stated that it is blurry to us as well, and that is why we are asking to begin this process, so we can get some clarity on it and decide yes or no on it.

Councilor Thomas asked if it is correct that an outcome may be that we decide not to participate in this.

Director Buck stated that we could hear from the market that the project is not large enough for a public-private partnership to be a good delivery method and to be a good value for the money.

Councilor Bunder asked if that detail, the numbers, would begin to emerge with the project development agreement.

Clerk-Treasurer Rhodes stated that we would have to pay in order to get that to emerge. She stated that is her question, if this resolution does in fact obligate us to a process that has a cost. She stated that as she understands it, that cost has been represented as being several hundred thousand dollars, and that it will be funded by the RDC. She asked if this is a correct summary, and Director Poole answered affirmatively.

Councilor Hunt asked if this would come back to the Council or go through another chain of commands.

City Attorney Burns responded that the State Street MOU will not come back to the Council; the next thing the Council will see and vote on is the project development agreement.

Councilor Hunt asked if she is correct that this will go back for more public response.

City Attorney Burns responded that this is correct, explaining that unlike anything we have done before, there is a public hearing requirement for whatever the proposal ends up being.

Councilor Hunt stated that one of the nice things about the pre-planning was all of the focus groups with a lot of citizen input. She asked if we will have something similar to that again.

City Attorney Burns stated that this will be a formal public hearing.

Director Poole stated that when we did the MKSK study to create the vision for State Street it was community-driven with focus groups and planning groups. Now we are getting to the point of trying to enact that vision and create it.

Councilor Dietrich asked if he is correct that what is coming back to Council is the interest in financing the plan, and not the plan itself.

City Attorney Burns stated that this is correct. He stated that the project development agreement is not the plan and how it is going to be physically done on the ground. It is the financial arrangement and areas of responsibility between the City and Purdue in order to make that plan occur. It is a financial and responsibility document, not the exact look of the plan. He stated that all of the contractors are going to be given the Re-State as their document. They are going to try to please us, and this community has already said what they want, so it would be very surprising for them to come back with anything significantly different. He stated that the reason a BOT is used is because you are going out to the world of contractors and engineers, and asking them to give us advice on how to make this project happen quickly, cheaply, and with the least problem to the public. We are not asking them to re-plan the project; we have already done that.

Councilor Burch asked if it is correct that the State Street project design is a done deal, or if there can be any modification to it.

Director Buck responded that it is not designed; it is a concept.

Councilor Burch asked if we are giving permission for the concept so the contractor can tweak it, or say that this portion of the concept will not work.

Director Buck stated that we will do a lot of the initial engineering of surveying, utility locating, and actual traffic engineering of the concept, and marrying it together with the already approved Perimeter Parkway Transportation Plan. It will be put together in a request for proposals that will go out to the market. Those teams in the market will form and complete the engineering based on what we put into the request for proposals. So, we say "if you deviate from this, you need to show us where and explain why," but the general plan to be followed is laid out.

Councilor Burch stated that this is to make this concept a reality, even though she does not like a particular section of the concept.

Director Buck stated that whenever we engineer a project it is a compromise of all of the variables and all of the interests. Sometimes we have to give a little bit to get a better end result for the overall project. It might be a little narrower traffic lane, or it might be a bike lane and not a trail, or it might be a wide sidewalk and not a bike lane, because right-of-way is only so wide. The request for proposals will include the instruction to minimize right-of-way impacts.

Councilor Burch asked what will happen if we accept a proposal, but within that proposal they say that a part of the concept will not work and give another idea.

Director Buck responded that we are vetting it carefully right now, to where we are confident it is going to work, and if anybody would come back with that then the proposal will probably not be accepted. He stated that it is unlikely that somebody will have that much better of idea than what we are going to put out.

Councilor Burch asked if this resolution is to give permission to send out a request for proposals.

City Attorney Burns stated that it is not even that far, but it would be the guideposts to later come back to the Council with the project development agreement. He confirmed for Councilor Burch that there will be numbers available in that agreement. He confirmed for Councilor Burch that the Council is being asked to approve this resolution that may cost a couple of hundred thousand dollars.

Councilor DeBoer stated that this is also a show of support to the University. He stated that their Trustees are also going into this unsure on if we are willing to back it up as well. When we support this it shows the Trustees that we are in on this and this can get off the ground.

Councilor Burch stated that the Trustees can come here to give their side of it.

Councilor Dietrich asked if some of these costs would be incurred if we were to do this the other way, the old fashioned way of bidding it out. He asked if it is engineering costs that would have to happen for State Street to be improved, rather it be by BOT or the old way of sending it out for bids and getting stuck with the low bidder.

Director Buck responded absolutely. There will be costs to do the same steps, in a slightly different order, that we would have to outlay to do the project, whether it is many phases over many years in smaller chunks at a time, or this initial outlay of some sunk costs. He stated that if we come back with a project development agreement that the Council approves, then many of those costs may get rolled into the overall structure of financing the project.

There was no further discussion.

CITIZEN COMMENTS

► Mary Cook (Harry's Chocolate Shop, 329 West State Street, owner) spoke about her experiences in attending the State Street project planning meetings, and noted that they included people from all walks of life. She spoke about some of the changes to the street in the past, and stated that State Street needs fixed in the heart of campus. She stated that there have been 20 or 30 years of planning ring roads around it, and those projects have been cancelled due to the reality of how it works out. She stated that the safety, the infrastructure, and the things that need to happen in the oldest part of town need to be addressed. She stated that Purdue is a huge part of it; we cannot just fix the street from Pierce to the Levee. She stated that none of us would be here without Purdue, so we have to look at this as a family and compromise and take it one step at a time. She stated that she hopes that the Council does approve this.

Councilor Burch stated that she thinks that the Mayor would like to have this project done in three or four years.

Ms. Cook stated that she thinks that would be great as she has had projects affect her businesses in the past. She stated that she hopes that in that short period of time that the City is focusing on the safety and infrastructure, and perhaps other things such as performing arts can come later. She stated that she understands asking for specifics and absolutes, but she does not know anybody that gets that without working together, and she hopes that Council approves it.

Councilor Keen stated that he would like to emphasize that Purdue University is a willing participant in this process at this time, which he thinks that the City needs to recognize that and bond this partnership with them to make this project happen.

ADJOURNMENT

There being no further business at this time, Councilor Bunder took the consent of the Council and adjourned the meeting, the time being 5:18 p.m.